

EXHIBIT 5

<p style="text-align: right;">Page 1</p> <p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK</p> <p>-----X AMERICAN BROADCASTING : COMPANIES, INC., et al., : : Plaintiffs, : : Case No. vs. : : 19-cv-7136-LLS DAVID R. GOODFRIEND and : SPORTS FANS COALITION NY, : INC., : : Defendants. : -----X</p> <p style="text-align: center;">VIRTUAL VIDEOTAPED DEPOSITION OF LEW LEONE Monday, November 16, 2020 10:01 a.m. Eastern Standard Time</p> <p>REPORTER: Dawn A. Jaques, CSR, CLR</p> <hr/> <p style="text-align: center;">DIGITAL EVIDENCE GROUP 1730 M Street, NW, Suite 812 Washington, D.C. 20036 (202) 232-0646</p>	<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES (Continued): 2 3 On behalf of Defendants David R. Goodfriend and 4 Sports Fans Coalition NY, Inc.: 5 R. DAVID HOSP, ESQ. 6 MARK PUZELLA, ESQ. 7 LAURA NAJEMY, ESQ. 8 LINDSAY RINDSKOPF, ESQ. 9 CAROLINE SIMONS, ESQ. 10 Orrick, Herrington & Sutcliffe LLP 11 51 West 52nd Street 12 New York, New York 10019 13 PHONE: (212) 506-3535 14 EMAIL: dhosp@orrick.com 15 mpuzella@orrick.com 16 lnajemy@orrick.com 17 lrindskopf@orrick.com 18 csimons@orrick.com 19 20 VIDEOGRAPHER AND EXHIBIT TECHNICIAN: 21 Henry Marte, Digital Evidence Group 22</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES: 2 3 On behalf of the Plaintiffs: 4 JOSEPH M. TERRY, ESQ. 5 JANE CHONG, ESQ. 6 Williams & Connolly LLP 7 725 Twelfth Street, N.W. 8 Washington, D.C. 20005 9 PHONE: (202) 434-5320 (Mr. Terry) 10 (202) 434-5295 (Ms. Chong) 11 EMAIL: jterry@wc.com 12 jchong@wc.com 13 14 ALSO PRESENT: 15 Elizabeth Casey, In-House Counsel, Fox 16 Joe Di Scipio, In-House Counsel, Fox 17 18 19 20 21 22</p>	<p style="text-align: right;">Page 4</p> <p>1 I-N-D-E-X 2 WITNESS: PAGE: 3 LEW LEONE 4 Examination by Mr. Hosp 8, 93 5 Examination by Mr. Terry 86, 100 6 7 E-X-H-I-B-I-T-S 8 LEONE DEPOSITION EXHIBIT: PAGE: 9 Exhibit 1 December 17, 2019, Agreement 10 (No Bates number) 55 11 12 13 14 15 16 17 18 19 20 21 22</p>

<p style="text-align: right;">Page 89</p> <p>1 advantaged when the Towers came down, and NBC, 2 Fox, and the other stations were scrambling to get 3 back up to put temporaries up on Empire, but there 4 was a -- there was a scramble. 5 Q And you talked about a number of 6 efforts that were made after that to try to find a 7 new location for an antenna that a number of 8 different broadcasters could use; is that right? 9 A Yes, those efforts went on for years. 10 Q And you talked about as part of that 11 effort, one thing that people looked at was 12 putting an antenna on Governors Island? 13 A Yeah, a stand-alone antenna on 14 Governors Island, and it was countless hours of 15 discussion. And again, that was sort of the 16 consensus that that would be the best place, and 17 there was a lot of lobbying done, and it was 18 basically shut down by, I believe it was 19 Governor Pataki at the time. 20 Q Okay. And there was also discussion 21 at the time of potentially using translators as 22 one alternative; is that right?</p>	<p style="text-align: right;">Page 91</p> <p>1 Fox Broadcasting, and I think you had mentioned 2 something about their corporate relationship 3 earlier. 4 Do you know the precise corporate 5 relationship between those two entities? 6 A No, I don't. I'd have to be able to 7 read, you know, a prospectus to figure that out, 8 but no, I don't know. 9 We're part of the same company. I 10 don't know, you know, if we're a subsidiary or 11 wholly owned or the terminology. 12 Q Okay. And you had mentioned how 13 audience size plays a role in advertising revenue. 14 Is that based on Nielsen ratings or something 15 else? 16 A It's based solely on Nielsen ratings. 17 Q Okay. 18 A Now, we do -- anything that we put out 19 on our website, we know what the viewership levels 20 are. And I don't know -- I honestly don't know 21 the relationship with the over-the-top. I mean, I 22 know they would know what the viewership is. I</p>
<p style="text-align: right;">Page 90</p> <p>1 A That was one of -- yes, that was one 2 of the options that was talked about. 3 Q Okay. And ultimately, what did Fox 4 and other broadcasters land on as the best viable 5 solution for broadcasting to the largest number of 6 people with the strongest signal strength allowed? 7 A Well, as it turned out, our best 8 option at that time was go back to Empire, which 9 we did, and wait until the World Trade Center was 10 complete. 11 Q Okay. And that is currently where 12 your signal is? 13 A Yes. 14 Q All right. And as a result of the 15 location and the power there, are your stations 16 able to broadcast to the largest area and with the 17 strongest strength permitted by the FCC? 18 A Yes, we're at -- we're at full power 19 as regulated by the FCC. 20 Q Okay. You had mentioned, and I asked 21 you a question about a couple of different 22 Fox entities, Fox Television Stations and</p>	<p style="text-align: right;">Page 92</p> <p>1 don't know to the extent that they share that with 2 Fox, but I typically don't see that data. 3 Q Okay. And to your knowledge, do 4 individuals who view your programming through 5 Locast count for Nielsen ratings? 6 A They do not. That's one of the 7 biggest issues with Locast in my mind. 8 Q You had mentioned -- you had testified 9 a little bit about the relationship between 10 retransmission fees and advertising revenue and, 11 you know, what percentage of your overall revenue 12 came from which. 13 Can you give us a high-level 14 explanation of what has happened with advertising 15 fees during this period? I think you said what 16 was happening with retransmission, but what was 17 happening with advertising over the last 10 years? 18 A Well, because of my knowledge of the 19 market and having worked at multiple TV stations, 20 and also we do receive audited figures that were 21 from Ernst & Young, now they're from a different 22 company, the ad revenue in -- I can take you back</p>

<p style="text-align: right;">Page 93</p> <p>1 even further -- in the New York market peaked in</p> <p>2 2000, 2001, at roughly \$1.6 billion amongst all</p> <p>3 the over-the-air TV stations. We're now down</p> <p>4 under a billion dollars in ad revenue, so it's</p> <p>5 been death by a thousand cuts to the TV stations.</p> <p>6 Some of that -- we've recouped some of</p> <p>7 that, not even close to all of it, with</p> <p>8 retransmission, but again, the number is under a</p> <p>9 billion dollars. So it went from a billion six to</p> <p>10 under a billion, and that's all in. That includes</p> <p>11 ad revenues and retransmission fees.</p> <p>12 So it's substantially -- it's a</p> <p>13 substantially depressed environment in the</p> <p>14 New York market, and it's worse in other markets.</p> <p>15 MR. TERRY: I don't have any more</p> <p>16 questions at this time.</p> <p>17 MR. HOSP: Mr. Leone, I just have a</p> <p>18 few follow-ups.</p> <p>19 FURTHER EXAMINATION BY COUNSEL FOR DEFENDANTS</p> <p>20 BY MR. HOSP:</p> <p>21 Q You mentioned that individuals at Fox,</p> <p>22 the Fox network, communicated to you their mandate</p>	<p style="text-align: right;">Page 95</p> <p>1 that with anyone?</p> <p>2 A No.</p> <p>3 Q And so you know whether or not the</p> <p>4 network considers viewers of the cable stream as</p> <p>5 more valuable to them than viewers who access by</p> <p>6 over the air?</p> <p>7 MR. TERRY: Objection to form, and</p> <p>8 I'll caution the witness not to speculate about</p> <p>9 what others may think.</p> <p>10 BY MR. HOSP:</p> <p>11 Q Do you know?</p> <p>12 A Can you repeat the question?</p> <p>13 Q Sure. Do you know what type of viewer</p> <p>14 the network considers more valuable, somebody who</p> <p>15 accesses it through a cable subscription or</p> <p>16 somebody who accesses it through over the air?</p> <p>17 A No, I don't know how they feel.</p> <p>18 Q You mentioned that Locast is not</p> <p>19 measured in Nielsen. How do you know that?</p> <p>20 A I asked my head of research.</p> <p>21 Q And what did they find out?</p> <p>22 A And there's no over-the-top -- there's</p>
<p style="text-align: right;">Page 94</p> <p>1 to have the best signal possible. I'm</p> <p>2 paraphrasing, I'm not trying to put words in your</p> <p>3 mouth, but do you recall that testimony?</p> <p>4 A Yes.</p> <p>5 Q Who communicated that to you?</p> <p>6 A It was both the CFO, the CEO, and the</p> <p>7 EVP of Sales.</p> <p>8 Q Who were those?</p> <p>9 A My boss, Jack Abernethy, is the CEO.</p> <p>10 The CFO is no longer here, that was Betsy Swanson;</p> <p>11 and the EVP of Sales is Jim Burke. I'd also add</p> <p>12 the COO, Dennis Swanson.</p> <p>13 Q And in the course of either those</p> <p>14 conversations or any other conversations, did any</p> <p>15 of those individuals discuss whether or not cable</p> <p>16 subscriber viewers are more valuable to the</p> <p>17 company than over-the-air viewers?</p> <p>18 A No, did not have that discussion.</p> <p>19 Q Have you ever had any sort of</p> <p>20 discussion about that?</p> <p>21 A No, not with anyone at Fox.</p> <p>22 Q Have you had any conversation like</p>	<p style="text-align: right;">Page 96</p> <p>1 no measurement currently of the over-the-top</p> <p>2 audience via Nielsen.</p> <p>3 Q Well, I think what you indicated was</p> <p>4 you didn't know the degree to which Nielsen shared</p> <p>5 those ratings of over-the-top with Fox.</p> <p>6 A I don't -- I don't agree with -- I</p> <p>7 didn't say that.</p> <p>8 The over-the-top -- over-the-top</p> <p>9 operators, they know who's watching, and we</p> <p>10 know -- just as we know who's watching our</p> <p>11 website, but they don't share that information as</p> <p>12 far as I know. They may share it with Fox, but</p> <p>13 that doesn't get shared by me.</p> <p>14 And honestly, what we care about here</p> <p>15 is the overall audience, because the only thing</p> <p>16 that we can control is our ad sales. We have no</p> <p>17 control over our retransmission or anything like</p> <p>18 that. So I'm agnostic. I don't care how the</p> <p>19 person is watching, as long as they're counted,</p> <p>20 then we can monetize that.</p> <p>21 That's my -- that's job one for me is</p> <p>22 to -- I control what I can control and get the</p>

<p style="text-align: right;">Page 97</p> <p>1 greatest, you know, ad revenue that we possibly</p> <p>2 can for the viewers that are measured. And again,</p> <p>3 I don't care where they come from are.</p> <p>4 Q Okay. And Nielsen has the ability to</p> <p>5 track over-the-top viewership, correct?</p> <p>6 A I don't know that. It's currently</p> <p>7 not -- I know that it's currently not counted.</p> <p>8 Q When you say that you know that it's</p> <p>9 currently not counted, how do you know that?</p> <p>10 A My head of research told me it's</p> <p>11 currently not counted, and he's got more knowledge</p> <p>12 than anyone I know.</p> <p>13 Q So that's all -- no over-the-top is</p> <p>14 counted, is that what you're trying to say?</p> <p>15 A That's what I'm saying.</p> <p>16 Q Okay. And you know that just from</p> <p>17 your head of research?</p> <p>18 A That and other factors, yes.</p> <p>19 Q What are the other factors?</p> <p>20 A Business practices.</p> <p>21 Q What do you mean by that?</p> <p>22 A We do not currently stream in pattern</p>	<p style="text-align: right;">Page 99</p> <p>1 THE WITNESS: I don't know. I know</p> <p>2 that they're not tracking our viewing.</p> <p>3 BY MR. HOSP:</p> <p>4 Q Okay. And other than the ways in</p> <p>5 which you express that you know it, is there any</p> <p>6 other basis that you claim that knowledge?</p> <p>7 A Yeah, I believe Nielsen has stated</p> <p>8 that they're not tracking to my research -- head</p> <p>9 of research.</p> <p>10 Q Okay. And you believe that?</p> <p>11 A I know that.</p> <p>12 Q Because?</p> <p>13 A It's not in our numbers.</p> <p>14 Q And you're basing -- I just want</p> <p>15 to make -- other than -- I just want to make sure</p> <p>16 that other than -- you know, other than the</p> <p>17 conversations you've had with your research</p> <p>18 assistant and your -- and your knowledge of the</p> <p>19 business practices, of your own business</p> <p>20 practices, there isn't any other basis.</p> <p>21 MR. TERRY: Objection. I don't think</p> <p>22 he said research assistant. It was head of</p>
<p style="text-align: right;">Page 98</p> <p>1 our ads that we run over the air on over-the-top.</p> <p>2 Q But how does that impact the question</p> <p>3 of whether or not Nielsen tracks over-the-top</p> <p>4 viewing?</p> <p>5 A Because Nielsen doesn't track them, so</p> <p>6 they're not counted, so therefore we don't stream</p> <p>7 the same ads to them.</p> <p>8 Q Okay. But do you know whether or not</p> <p>9 Nielsen has the ability to track?</p> <p>10 A I don't know. They're currently not</p> <p>11 tracking it for us.</p> <p>12 Q Okay. And other than business</p> <p>13 practice and your research assistants, is there</p> <p>14 any other basis that you believe you know that?</p> <p>15 A No, I know it. If they were counting</p> <p>16 it, we would run the same ads and get credit for</p> <p>17 them. We're currently not getting any credit for</p> <p>18 any over-the-top viewing.</p> <p>19 Q Okay. But do you know whether or not</p> <p>20 Nielsen tracks other over-the-top viewing?</p> <p>21 MR. TERRY: Objection to form, asked</p> <p>22 and answered. You can answer.</p>	<p style="text-align: right;">Page 100</p> <p>1 Research.</p> <p>2 THE WITNESS: It was President of</p> <p>3 Research, and I'm pretty sure Nielsen would --</p> <p>4 Nielsen is going to want to charge us when they</p> <p>5 start measuring that.</p> <p>6 BY MR. HOSP:</p> <p>7 Q Okay. So no other -- other than what</p> <p>8 you've testified to so far, no other basis?</p> <p>9 A Correct.</p> <p>10 MR. HOSP: Okay, I have nothing</p> <p>11 further.</p> <p>12 FURTHER EXAMINATION BY COUNSEL FOR THE PLAINTIFFS</p> <p>13 BY MR. TERRY:</p> <p>14 Q Mr. Leone, with over-the-top carriers</p> <p>15 such as YouTube, are there licensing agreements or</p> <p>16 carriage agreements between Fox and those</p> <p>17 entities?</p> <p>18 A Yes. I'm not -- same way I'm not</p> <p>19 privy to the exact agreements as I am with cable,</p> <p>20 yes, there's very similar agreements.</p> <p>21 Q Okay. And when cable operators carry</p> <p>22 your programming, that is subject to agreements</p>

<p style="text-align: right;">Page 101</p> <p>1 with those carriers as well, right?</p> <p>2 A Yes, also measured by Nielsen.</p> <p>3 Q Okay. Now, when people view when</p> <p>4 Locast transmits your programming, do you have any</p> <p>5 agreements in place with them?</p> <p>6 A No agreements in place that I know of.</p> <p>7 Q And do you have any concerns about the</p> <p>8 manner in which Locast presents your programming?</p> <p>9 A I have great concerns. So when I</p> <p>10 found out that I would be called upon for this</p> <p>11 deposition, I downloaded the Locast app to</p> <p>12 experience it for myself, and I was horrified,</p> <p>13 one, that it's portrayed as a free service, and I</p> <p>14 was inundated and barraged by ads asking for</p> <p>15 money.</p> <p>16 And those ads are indiscriminate in</p> <p>17 their placement, whereby they're placed over the</p> <p>18 top of my content -- our content, our news</p> <p>19 content, our syndicated content, our network</p> <p>20 content, our sports -- randomly. So it's</p> <p>21 disruptive.</p> <p>22 It's also placed over advertisements,</p>	<p style="text-align: right;">Page 103</p> <p>1 tortured any further with those ads, but I'm not</p> <p>2 going to pay the five bucks to something that is</p> <p>3 just antithetical to my business.</p> <p>4 MR. TERRY: Okay, thank you.</p> <p>5 No more questions at this time.</p> <p>6 MR. HOSP: We have nothing further.</p> <p>7 THE VIDEOGRAPHER: Okay. The time is</p> <p>8 12:43 p.m. Off the record.</p> <p>9 (Whereupon, at 12:43 p.m., the taking</p> <p>10 of the deposition was concluded.</p> <p>11 Reading and signature were reserved.)</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
<p style="text-align: right;">Page 102</p> <p>1 which I have a contract with my advertisers to</p> <p>2 display their ads on our signal, and the ads get</p> <p>3 covered up. So it's disingenuous and immoral, I</p> <p>4 think, to sell our advertisers a commercial, and</p> <p>5 then have it get covered up by viewers that are</p> <p>6 viewing it over Locast.</p> <p>7 So it's, in my mind, a disruption of</p> <p>8 our business arrangements with legitimate</p> <p>9 over-the-top carriers and cable companies, and</p> <p>10 it's immoral to the way we -- you know, the way I</p> <p>11 want to carry out my business practices.</p> <p>12 And it's also not measured, so it's</p> <p>13 sort of a double whammy on us. It's not measured,</p> <p>14 and it takes away from subscribers, so we can't,</p> <p>15 you know, benefit from any subscriber fees we get</p> <p>16 from people that watch our signal, and we can't</p> <p>17 benefit from any advertisers we might --</p> <p>18 advertising fees we might get because it's not</p> <p>19 counted.</p> <p>20 So it's a -- to say it's a free</p> <p>21 service is also disingenuous, because I assume</p> <p>22 that if you pay the five bucks, you won't be</p>	<p style="text-align: right;">Page 104</p> <p>1 CERTIFICATE OF NOTARY PUBLIC</p> <p>2 I, DAWN A. JAQUES, a Notary Public in and for</p> <p>3 the District of Columbia, before whom the foregoing</p> <p>4 deposition was taken, do hereby certify that witness</p> <p>5 whose testimony appears in the foregoing pages was</p> <p>6 duly sworn by me; that the testimony of said witness</p> <p>7 was taken by me in shorthand at the time and place</p> <p>8 mentioned in the caption hereof and thereafter</p> <p>9 reduced to typewriting under my supervision; that</p> <p>10 said deposition is a true record of the testimony</p> <p>11 given by said witness; that I am neither counsel</p> <p>12 for, related to, nor employed by any of the parties</p> <p>13 to the action in which this deposition is taken;</p> <p>14 and, further, that I am not a relative or employee</p> <p>15 of any attorney or counsel employed by the parties</p> <p>16 thereto, nor financially or otherwise interested in</p> <p>17 the outcome of the actions.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p style="text-align: right;">Dawn A. Jaques, CSR, CLR Notary Public in and for Commonwealth of Virginia</p> <p>My commission expires: August 31, 2023 Registration No. 132328</p>

Page 105	Page 107
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>1 Lew Leone, c/o Williams & Connolly LLP 2 725 Twelfth Street, N.W. Washington, D.C. 20005</p> <p>3</p> <p>4 Case: American Broadcasting Companies, Inc., et al. v. Goodfriend, et al. Date of deposition: November 16, 2020 5 Deponent: Lew Leone</p> <p>6</p> <p>7 Please be advised that the transcript in the above 8 referenced matter is now complete and ready for signature. 9 The deponent may come to this office to sign the transcript, 10 a copy may be purchased for the witness to review and sign, 11 or the deponent and/or counsel may waive the option of 12 signing. Please advise us of the option selected. 13 Please forward the errata sheet and the original signed 14 signature page to counsel noticing the deposition, noting the 15 applicable time period allowed for such by the governing 16 Rules of Procedure. If you have any questions, please do 17 not hesitate to call our office at (202)-232-0646.</p> <p>18</p> <p>19</p> <p>20 Sincerely, Digital Evidence Group 21 Copyright 2020 Digital Evidence Group Copying is forbidden, including electronically, absent 22 express written consent.</p> </div> <div style="width: 45%; text-align: center;"> <p>Page 105</p> </div> </div>	<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>1 Digital Evidence Group, LLC 2 1730 M Street, NW, Suite 812 3 Washington, D.C. 20036 4 (202)232-0646</p> <p>5</p> <p>6 ERRATA SHEET</p> <p>7</p> <p>8 Case: American Broadcasting Companies, Inc., et al. v. Goodfriend, et al. 9 Witness Name: Lew Leone 10 Deposition Date: November 16, 2020 11 Page No. Line No. Change</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21 _____ Signature Date</p> <p>22</p> </div> <div style="width: 45%; text-align: center;"> <p>Page 107</p> </div> </div>
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>1 Digital Evidence Group, L.L.C. 1730 M Street, NW, Suite 812 2 Washington, D.C. 20036 (202) 232-0646</p> <p>3</p> <p>4 SIGNATURE PAGE Case: American Broadcasting Companies, Inc., et al. v. Goodfriend, et al. 5 Witness Name: Lew Leone Deposition Date: November 16, 2020</p> <p>6</p> <p>7 I do hereby acknowledge that I have read 8 and examined the foregoing pages 9 of the transcript of my deposition and that:</p> <p>10 (Check appropriate box): () The same is a true, correct and 11 complete transcription of the answers given by me to the questions therein recorded. 12 () Except for the changes noted in the attached Errata Sheet, the same is a true, 13 correct and complete transcription of the answers given by me to the questions therein 14 recorded.</p> <p>15</p> <p>16 _____ DATE WITNESS SIGNATURE</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21 _____ DATE NOTARY</p> <p>22</p> </div> <div style="width: 45%; text-align: center;"> <p>Page 106</p> </div> </div>	<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>1 Digital Evidence Group, L.L.C. 1730 M Street, NW, Suite 812 2 Washington, D.C. 20036 (202) 232-0646</p> <p>3</p> <p>4 SIGNATURE PAGE Case: American Broadcasting Companies, Inc., et al. v. Goodfriend, et al. 5 Witness Name: Lew Leone Deposition Date: November 16, 2020</p> <p>6</p> <p>7 I do hereby acknowledge that I have read 8 and examined the foregoing pages 9 of the transcript of my deposition and that:</p> <p>10 (Check appropriate box): () The same is a true, correct and 11 complete transcription of the answers given by me to the questions therein recorded. 12 () Except for the changes noted in the attached Errata Sheet, the same is a true, 13 correct and complete transcription of the answers given by me to the questions therein 14 recorded.</p> <p>15</p> <p>16 _____ DATE WITNESS SIGNATURE</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21 _____ DATE NOTARY</p> <p>22</p> </div> <div style="width: 45%; text-align: center;"> <p>Page 106</p> </div> </div>